

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 216 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

YAKUB ABDUL KARIM

VANTHALI

Appearance:

MR AJ DESAI, APP, for appellant.

MS PANCHAL FOR MR ND NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/09/98

ORAL JUDGEMENT

1. An incident occurred at about 16.00 hours on 8th March, 1986 on the Junagadh-Vanthili road near Shahpur overbridge, involving Taxi No.GTW 2355 and GTX 208. The accident resulted into injuries to several persons and death of four persons. Respondent-Yakub Abdul Karim came to be charge sheeted and tried by learned Judicial Magistrate, First Class, Vanthili, district Junagadh in Criminal Case No.479 of 1986. The accused pleaded not

guilty and expressed his desire to face the trial. After considering the evidence led by the prosecution, the learned Magistrate, came to a conclusion that the prosecution has failed to establish the charges against the accused-respondent under Sections 279, 304-A, 337 and 338 of Indian Penal Code and Sections 112 and 116 of the Motor Vehicles Act, 1939. Being aggrieved by the said judgment and order recorded by the learned Magistrate, on 19th December, 1990, the State has preferred this appeal.

2. The brief facts of the case are that, according to the prosecution case, respondent-Yakub Abdul Karim was driving taxi No.GTW 2355 and was proceeding from Shahpur to Junagadh. The taxi was occupied by passengers. When the taxi reached near the overbridge near Shahpur, it collided with a taxi bearing No.GTX 208 coming from the opposite direction, as a result of which several persons were injured and four persons died - two of whom were not passengers in either of the vehicles but were pedestrians. The information came to be lodged with the police, offence was registered, investigated and charge sheet filed.

3. Mr. A.J. Desai, learned Additional Public Prosecutor appearing for the State, has taken this Court through the relevant portions of the record and proceedings and has tried to argue that the learned Magistrate has committed an error in concluding that the prosecution has failed to prove negligence on the part of the respondent-driver herein. The learned Magistrate has drawn wrong inference and has observed that because the road surface was uneven and because the road was zigzag, the vehicle could not have been driven at a high speed and, therefore, the appeal may be allowed.

4. On the other hand, Ms. Panchal, appearing on behalf of Mr. N.D. Nanavati for the respondent, has opposed this appeal and has submitted that the judgment and order impugned in this appeal cannot be said to be erroneous or illegal. The learned trial Magistrate has considered all the evidence in its correct perspective and there is no need to interfere with the order. She, therefore, urged that the appeal may be dismissed.

5. At the outset, it may be noted that, according to the charge Ex.2, it is charged that the accused-respondent was driving taxi No.GTW 2355. As against this, the evidence of witnesses, if seen, they all say that the accused was driving the vehicle taxi No.GTX 208 and, therefore, the very foundation of the prosecution case stands on a shaky foundation.

6. Further, if the evidence is screened, it is clear that the witnesses can be divided into two sets. One set consists of persons travelling in taxi No.GTW 2355 and the other side consists of persons travelling in taxi No. GTX 208.

7. If the evidence is seen, the depositions of the witnesses are unanimous only on one point that the respondent was driving vehicle GTX 208. Some witnesses allege that the taxi was driven at a high speed. Some witnesses say that the taxi was being driven at a moderate speed. But they all admit that the road on which the taxi driven by the accused-respondent was travelling was a zigzag road and the surface was broken. The incident has occurred near a cross road and the taxi which was driven by the respondent-accused was supposed to take a left turn. The impact on the other vehicle is on the left side. The result is that this vehicle could not have gone on the wrong side and made the impact on left side of the other vehicle and, therefore, it cannot be said that the evidence led by the prosecution establishes that the driver-respondent was driving the vehicle negligently. Speed of the vehicle going on a highway can never be the criteria for deciding criminal negligence Speed and negligence are not synonymous and there has to be specific evidence to establish criminal negligence in holding a driver guilty of criminal negligence.

8. It is also found from the record that the prosecution has not been able to establish as to on what portion of the road, the incident occurred. The witnesses are giving different versions. Panchnama of the place of offence is not produced on record. Panch witnesses are not examined and above all, the Investigating Officer is also not examined. If that be so, it is difficult to uphold the argument advanced by Mr. Desai that the learned Magistrate was in error in holding that the prosecution has failed to establish the case against the accused. The appeal, therefore, merits dismissal only and the same is dismissed.

[A.L. DAVE, J.]

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